

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 9, 2018

Sheila T. Reiff
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2016AP1353-CR

Cir. Ct. No. 2012CF47

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MARCO XAVIER TAYLOR,

DEFENDANT-APPELLANT.

APPEAL from judgments and an order of the circuit court for Milwaukee County: TIMOTHY G. DUGAN and JOHN SIEFERT, Judges.
Affirmed.

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Marco Taylor appeals from judgments¹ convicting him of obstructing/resisting an officer and being a felon in possession of a firearm. Taylor also appeals from an order² denying his postconviction motion seeking sentence modification relating to the \$3600 fine imposed by the circuit court. We affirm.

¶2 A jury convicted Taylor of obstructing/resisting but was unable to reach a verdict on the felon in possession of a firearm charge. Taylor subsequently pled guilty to the firearm possession charge. By the time Taylor was sentenced on the firearm possession offense, he had already served the previously imposed seven-month sentence for obstructing/resisting. At sentencing on the firearm possession offense, the circuit court noted that despite being on a \$4000 posted bond, Taylor accumulated new firearm-related charges (first-degree recklessly endangering safety and another charge of felon in possession of a firearm). The court deemed the new offenses committed while on bond indicative of Taylor's bad character and found that he posed a serious danger to the public. After considering Taylor's character, his prior offenses, his lack of employment, the danger he posed to the public due to his repeated possession and use of firearms, and his prior offenses, the court imposed what it characterized as a "very severe" five-year sentence (three years of initial confinement and two years of extended supervision). The court also imposed a "mandatory" DNA surcharge and a \$3600³ fine to be satisfied from the \$4000 bond.

¹ The judgments were entered by the Honorable Timothy G. Dugan.

² The order was entered by the Honorable John Siefert.

³ The judgment of conviction broke down the \$3600 fine into a \$3332 fine with the balance in court and related costs.

¶3 Postconviction, Taylor moved the circuit court to modify his sentence by striking the \$3600 fine as a misuse of discretion or grant him a hearing to determine his ability to pay the fine. As grounds, Taylor argued that the circuit court did not state grounds at sentencing for the fine and Taylor's ability to pay the fine had to be determined. Taylor further argued that the \$4000 bond out of which his fine was satisfied had been posted by his mother.

¶4 In its order denying Taylor's sentence modification motion without a hearing, the circuit court noted that the terms of the bond were made clear to Taylor's mother and the risk of bond forfeiture was clearly stated. The court also rejected Taylor's misuse of discretion claim because the firearm possession offense was serious, and the fine was part of the punishment and rehabilitation components of the sentence. In setting the amount of the fine, the court considered the bond funds on deposit and found that Taylor had the ability to pay the fine.

¶5 On appeal, Taylor renews his misuse of discretion argument in relation to the fine. We will affirm if the record establishes that the circuit court properly exercised its discretion. *State v. Kuechler*, 2003 WI App 245, ¶8, 268 Wis. 2d 192, 673 N.W.2d 335. If supported by the record, a fine can be an appropriate component of the sentence. *State v. Ramel*, 2007 WI App 271, ¶¶13-14, 306 Wis. 2d 654, 743 N.W.2d 502. The factors and considerations supporting the term-of-years sentence also support the circuit court's determination to impose the \$3600 fine. See *State v. Iglesias*, 185 Wis. 2d 117, 129, 517 N.W.2d 175 (1994). The court intended to impose a severe punishment upon Taylor, and the significant fine was one aspect of that consequence.

¶6 Taylor argues that he should have had an indigency hearing to address his ability to pay the \$3600 fine. We need not address whether Taylor’s sentence modification motion was sufficient to require a hearing. It is undisputed that Taylor’s fine was satisfied from the \$4000 bond. Regardless of its source, funds posted for bail are “conclusively presumed to be the defendant’s money.” *Id.* at 130. WISCONSIN STAT. § 969.03(4) (2015-16)⁴ states that bail money shall be applied to fines and costs imposed by the circuit court. *Iglesias*, 185 Wis. 2d at 131. The court did not err in ordering the \$3600 fine satisfied out of the \$4000 bond.

¶7 Finally, for the first time on appeal, Taylor argues that the DNA surcharge imposed for his misdemeanor conviction for obstructing/resisting should be vacated. Taylor concedes that he has not raised this issue in the circuit court. We do not decide issues raised for the first time on appeal. *See State v. Rogers*, 196 Wis. 2d 817, 826-27, 539 N.W.2d 897 (Ct. App. 1995).

By the Court.—Judgments and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

⁴ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

